

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JASON SIGERS,

Plaintiff,

Case No. 08-13298

v.

Patrick J. Duggan  
United States District Judge

MICHIGAN DEPARTMENT  
OF CORRECTIONS,

Michael Hluchaniuk  
United States Magistrate Judge

Defendant.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR  
LEAVE TO AMEND COMPLAINT AND DENYING  
PLAINTIFF'S REQUEST FOR DISCOVERY(Dkt. 13)**

Plaintiff filed a complaint against defendant Michigan Department of Corrections (MDOC) on July 31, 2008. (Dkt. 1). In lieu of a responsive pleading, the MDOC filed a motion to dismiss on October 2, 2008. (Dkt. 9). District Judge Patrick J. Duggan referred this motion to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (Dkt. 10). Plaintiff then filed a motion for leave to file an amended complaint on October 21, 2008, with a proposed amended complaint that identified several defendants and removed the

MDOC as a named defendant.<sup>1</sup> (Dkt. 13). In his motion, plaintiff also requests discovery of his grievances so that he may include all the proper defendants in his amended complaint. It appears that, while plaintiff was able to specifically name some defendants, others remain unidentified. Judge Duggan referred plaintiff's motion to amend and for discovery to the undersigned for hearing and determination. (Dkt. 14).

The Court concludes that plaintiff may amend his complaint as of right and without leave of the Court at this stage of the proceedings. Where “no defendant has yet filed a responsive pleading to the original complaint,” a plaintiff is “entitled to amend his complaint as of right pursuant to Fed.R.Civ.P. 15(a).” *Reynolds-Bey v. Harris-Spicer*, 2007 WL 1063304, \*1 (W.D. Mich. 2007); *see also, Sousa v. Ferguson*, 2005 WL 1796131 (W.D. Mich. 2005) (An “amendment as of right under Fed.R.Civ.P. 15(a) can be forestalled only by the service of a ‘responsive pleading,’” and “a motion to dismiss or for summary judgment is not considered to be a ‘responsive pleading’ for the purposes of Rule 15(a).”). Thus, plaintiff is **GRANTED** leave to file his amended complaint.

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<sup>1</sup> Because the amended complaint has been accepted by the Court through this order, and the MDOC has been dropped as a defendant in the amended complaint, the undersigned has issued a separate report and recommendation, recommending that the District Court deny the MDOC's motion to dismiss the original complaint as moot.

Plaintiff appears to be able to specifically identify most of the defendants by name and may later discover the names of any additional appropriate defendants in this case in the normal course of discovery, after service and after the newly named defendants have an opportunity to answer or otherwise respond to the amended complaint. Thus, plaintiff's request for discovery is **DENIED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not thereafter assign as error any defect in this Order to which timely objection was not made.

Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Date: October 31, 2008

s/Michael Hluchaniuk  
Michael Hluchaniuk  
United States Magistrate Judge

### **CERTIFICATE OF SERVICE**

I certify that on October 31, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Julia R. Bell, and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jason Sigers, # 445206, COOPER STREET CORRECTIONAL FACILITY, 3100 Cooper Street, Jackson, MI 49201.

s/James P. Peltier  
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